

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA	:	
	:	
-v-	:	18 Cr. 75 (DLC)
	:	
FRANKIE ALBA,	:	<u>ORDER</u>
	:	
Defendant.	:	
	:	
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DENISE COTE, District Judge:

Frankie Alba has filed a petition for compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A). On November 28, 2018, Alba pleaded guilty to conspiracy to distribute and possess with intent to distribute 100 grams or more of heroin and 500 grams or more of cocaine, in violation of Title 21, United States Code, Sections 846 and 841(b)(1)(B); and being a felon in possession of a firearm, in violation of Title 18, United States Code, Section 922(g)(1). On March 1, 2019, this Court sentenced Alba to 96 months' imprisonment, and he is currently serving that sentence at United States Penitentiary-Lewisburg. He is forty-eight years old and the Bureau of Prisons ("BOP") projects that he will be released on August 25, 2024.

Alba made an administrative request of his warden for compassionate release on September 13, 2020, and the request was denied on October 8. He then filed an administrative appeal,

which remains pending. In a letter dated March 10, 2021, Alba moved for compassionate release.¹

Since thirty days have elapsed since Alba made his request for compassionate release with his warden, he has exhausted his administrative remedies. Therefore, the Court may reduce his sentence if it concludes that "extraordinary and compelling reasons" warrant a reduction. 18 U.S.C. § 3582(c)(1)(A)(i). District courts are tasked with "independently . . . determin[ing] what reasons, for purposes of compassionate release, are extraordinary and compelling." United States v. Brooker, 976 F.3d 228, 234 (2d Cir. 2020) (citation omitted). If the Court finds that "extraordinary and compelling reasons" are present, the Court must also conclude that the sentencing factors set forth at 18 U.S.C. § 3553(a) weigh in favor of a reduction before reducing Alba's sentence.

Alba's petition is denied, as he has not demonstrated an extraordinary and compelling reason for early release. Alba points to his obesity and the increased risk of a severe case of COVID-19 among those suffering from obesity as the sole extraordinary and compelling circumstance meriting release in his case. But Alba also reports that he has received a course

¹ Alba's letter was received and docketed by this Chambers on March 17, 2021.

of the Moderna COVID-19 vaccine. Since he has been fully vaccinated against COVID-19, his risk of developing a severe case of COVID-19 is negligible. See Information about the Moderna COVID-19 Vaccine, Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/different-vaccines/Moderna.html> (last visited March 17, 2021). Therefore, the risk of contracting COVID-19 given his underlying health condition does not constitute an extraordinary and compelling reason for release.


Even if Alba had shown the existence of an extraordinary and compelling reason for release, however, the § 3553(a) factors would weigh strongly against his release. As reflected in the colloquy during the sentencing proceeding, Alba had remained engaged in the wholesale drug business despite his prior convictions. Issues of deterrence and appropriate punishment remain significant factors to consider in the context of this application. Accordingly, it is hereby

ORDERED that the March 10 petition for compassionate release pursuant to § 3582(c)(1)(A) is denied.

IT IS FURTHER ORDERED that the Clerk of Court shall mail
Alba a copy of this Order and note mailing on the docket.

SO ORDERED:

Dated: New York, New York
March 23, 2021



DENISE COTE
United States District Judge